

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO**

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	:	
	:	
Plaintiff,	:	
	:	
v.	:	CASE NO. 5:13-CV-1762
	:	
ANTHONY J. DAVIAN and DAVIAN CAPITAL ADVISORS, LLC,	:	
	:	
Defendants.	:	
	:	

**PLAINTIFF’S MOTION FOR DISMISSAL OF PRAYERS FOR MONETARY
RELIEF AND FOR ENTRY OF FINAL JUDGMENT**

Plaintiff United States Securities and Exchange Commission (“SEC”) respectfully submits this motion seeking: (i) an order dismissing its requests for disgorgement, prejudgment interest, and civil penalties against defendants Anthony J. Davian (“Davian”) and Davian Capital Advisors, LLC (“Davian Capital”), and (ii) the entry of final judgment against all Defendants. In support of its motion, the SEC respectfully states as follows:

1. The SEC filed its Complaint in this matter on August 13, 2013.
2. In its Complaint, the SEC seeks judgments against the Defendants consisting of permanent injunctions against future violations of the securities laws, as well as monetary relief in the form of disgorgement, prejudgment interest, and civil penalties.
3. On March 25, 2014, this Court entered—pursuant to Defendants’ written consent—a judgment of permanent injunction and other relief against Davian and Davian Capital. (ECF No. 27). The Court’s judgment permanently enjoined Defendants from

committing future violation of the securities laws, but reserved for later determination the amount of monetary relief to impose against them. (ECF No. 27 § IV).

4. Following the filing of the Complaint, the United States Attorney for the Northern District of Ohio brought criminal charges against Davian. *See United States v. Davian*, No. 5:14-CR-81. Davian has since pleaded guilty to fourteen counts of securities fraud, mail fraud, wire fraud, and money laundering. He is currently serving a 57-month term of imprisonment. (Exhibit A at 2 (judgment in criminal case)).

5. Davian was also ordered to pay \$1,787,679.62 in restitution in the criminal case. (Exhibit A at 5).¹ In light of this significant monetary restitution, the SEC hereby seeks to dismiss its prayers for disgorgement, prejudgment interest, and civil penalties against Davian in this civil matter.

6. Further, because Davian Capital was completely controlled by Davian, and because Davian Capital is no longer operational and is insolvent, the SEC seeks to dismiss its prayers for monetary relief against the entity.

7. The dismissal of the SEC's proposed monetary relief will fully resolve this litigation. Along with the proposed dismissal of monetary relief, the SEC moves for entry of final judgment against Davian and Davian Capital.

8. Due to Davian's incarceration, the SEC has been unable to seek his consent to this motion. But given the nature of the relief sought herein and the Defendants' previous consent to the judgment of permanent injunction and other relief (ECF No. 27), it is reasonable to infer that they will not object to this motion.

¹ Davian filed a notice of appeal in his criminal case, but he subsequently voluntarily dismissed that appeal. *See United States v. Davian*, No. 15-3092 (6th Cir.).

WHEREFORE, the SEC requests that the Court grant its motion, dismiss the requests for monetary relief in its Complaint, enter final judgment against Davian and Davian Capital, and grant such further relief as the Court deems just and proper.

Respectfully submitted,

**UNITED STATES SECURITIES AND
EXCHANGE COMMISSION**

By: /s/ Christopher H. White
One of Its Attorneys

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Dated: July 6, 2015

CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2015, I electronically filed the foregoing document(s) with the clerk of court for the U.S. District Court, Northern District of Ohio using the electronic case filing system of the court. The electronic case filing system sent a “Notice of Electronic Filing” to all attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

I also served the following parties via United States mail, first-class postage prepaid:

Anthony J. Davian
Register Number 60153-060
FCI Morgantown
Federal Correctional Institution
P.O. Box 1000
Morgantown, WV 26507

**UNITED STATES SECURITIES AND
EXCHANGE COMMISSION**

By: /s/ Christopher H. White
One of Its Attorneys